

**FILED**

2019 MAR -6 PM 3:02

**CIVIL  
DISTRICT COURT**

**CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS**

**STATE OF LOUISIANA**

**NO. 19-1916**

**SECTION NO. 8**

**DIVISION "N"**

**LAURA BIXBY**

**VERSUS**

**COLLIN ARNOLD**

**FILED:** \_\_\_\_\_

\_\_\_\_\_  
**DEPUTY CLERK**

**EXCEPTION OF NO CAUSE OF ACTION AND IN THE ALTERNATIVE  
OPPOSITION TO PETITION FOR WRIT OF MANDAMUS**

Collin Arnold, in his Official Capacity as the Director of the Department of Homeland Security and Emergency Preparedness ("HSEP") and custodian of public records ("Mr. Arnold") files this Exception of No Cause of Action and/or Opposition to the Petitioner's Petition for Writ of Mandamus pursuant to the Louisiana Public Records Law (the "Petition"), and in support, alleges as follows:

**INTRODUCTION**

Ms. Laura Bixby ("Petitioner") filed the foregoing Petition for Writ of Mandamus requesting that this Court compel Mr. Arnold to turn over records pursuant to her public records request. Petitioner brought this instant suit asserting that Mr. Arnold, in his capacity as the custodian of records for HSEP, "failed to provide public records of the locations of more than 400 publicly-visible cameras."<sup>1</sup> Consequently, the Petitioner is seeking a Court order compelling Mr. Arnold to turn over the requested records, an award of attorney's fees, damages, sanctions and costs as provided by Louisiana Revised Statute ("La. Rev. Stat. ") § 44:35(E) and La. Rev. Stat. § 44:37. Accordingly, Petitioner's requests for mandamus, attorney's fees, damages, sanctions and costs should be denied for these reasons:

1. Petitioner was not denied her right to inspect and/or copy those records that are considered

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<sup>1</sup> See Ms. Bixby's original petition.

3/7/19  
**VERIFIED**  
*Shirley A. Allen*

“public” under the law. Mr. Arnold did not refuse to perform his duties as the custodian of records for the Department of HSEP. The Petitioner was invoiced for copies of the records that were not subject to exemption under Louisiana Public Records Law.

2. The Petitioner is not entitled to attorney’s fees, damages, sanctions and costs because Mr. Arnold did not act in an arbitrary, capricious or unreasonable manner. Mr. Arnold provided a timely response on behalf of HSEP, to the Petitioner’s public records request and invoked the appropriate exemptions for certain records sought as afforded by the law.

### **FACTUAL BACKGROUND**

On August 9, 2018, Petitioner filed a public records request requesting the following:

1. Any map or maps which the City Maintains showing the location of all publicly visible (in other words, with red and blue lights and the NOPD logo) real time crime cameras, not including traffic/red light/school zone cameras, at the present date
2. Any policies governing the keeping of records of locations of such cameras on past dates.
3. Records or policies regarding the number and type of staff employed at the Real Time Crime Center.<sup>2</sup>

Mr. Arnold timely responded to the Petitioner’s public records request on August 14, 2018.

The Petitioner’s request was completed and closed out citing the Louisiana Public Records Law

La. Rev. Stat. § 44:3A(3) exemption as follows:

Records responsive to your first request regarding the location of the City's crime cameras are exempt from disclosure under the Public Records Law because they are records regarding investigative technical equipment and physical security information created in the prevention of terrorist-related activity. The Public Records Law provides, in pertinent part, as follows:

A. Nothing in this Chapter shall be construed to require disclosures of records, or the information contained therein, held by the offices of the attorney general, district attorneys, sheriffs, police departments, Department of Public Safety and Corrections, marshals, investigators, public health investigators, correctional agencies, communications districts, intelligence agencies, Council on Peace Officer Standards and Training, Louisiana Commission on Law Enforcement and Administration of Criminal Justice, or publicly owned water districts of the state, which records are:

...

(3) Records containing security procedures, investigative training information or aids, investigative techniques, investigative technical equipment or instructions on the use thereof, criminal intelligence information pertaining to terrorist-related activity, or threat or vulnerability assessments collected or obtained in the prevention of terrorist-related activity, including but not limited to physical

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<sup>2</sup> See Exhibit 1-Laura Bixby’s public records request.

security information, proprietary information, operational plans, and the analysis of such information, or internal security information;

La. Rev. Stat. § 44:3A(3); and

Nothing in this Chapter shall be construed to require disclosure of records containing security procedures, criminal intelligence information pertaining to terrorist-related activity, or threat or vulnerability assessments created, collected, or obtained in the prevention of terrorist-related activity, including but not limited to physical security information, proprietary information, operational plans, and the analysis of such information, or internal security information. Id. § 44:3.1.

Accordingly, the records responsive to your first request will not be made available for your review.

The Office of Homeland Security and Emergency Preparedness does not have records responsive to your second request regarding policies governing keeping records of locations of cameras.

Records responsive to your third request regarding number of employees at the Real Time Crime Center have been compiled and are available for your review, or you may purchase the records for \$0.50 (1 page @ \$0.50/page).

## **LAW AND ARGUMENT**

### **I. Bixby's petition fails to contain the elements needed to plead a cause of action for a Mandamus.**

In *Lewis v. Morrell*, the Court set forth six requirements needed for invoking the mandamus remedy under the Public Records Law: (1) a request must be made; (2) the requester must be a "person;" (3) the request must be made to a "custodian;" (4) the document requested must be a "public record;" (5) the document requested must exist; and (6) there must be a failure by the custodian to respond to the request.<sup>3</sup>

Here, the Petitioner has failed to meet all the requirements set forth in *Lewis*. Most importantly, the Petitioner has failed to prove the fourth (4<sup>th</sup>) element which requires that the document requested be a "public record." Additionally, the Petitioner cannot meet the sixth (6<sup>th</sup>) element which requires that there must be a failure by the custodian to respond to the request.

As previously demonstrated, Mr. Arnold timely responded to the Petitioner's request within the three day period as required by La. Rev. Stat. § 44:32D.<sup>4</sup> Mr. Arnold also responded in writing that the requested records was exempt from public disclosure based on La. Rev. Stat. §

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<sup>3</sup> *Lewis v. Morrell*, 16-1055 (La. App. 4 Cir. 4/5/17), 215 So.3d 737; 742-744

<sup>4</sup> Mr. Arnold responded in writing to the Petitioner's request on August 14, 2018, three days (exclusive of weekends) after the Petitioner filed her request on August 9, 2018.

44:3A(3). Thus, based on the rationale set forth in *Lewis*, this Honorable Court must dismiss the Petitioner's suit due to the fact that the Petitioner has no cause of action to bring forth the instant suit.

**II. The requested records are exempt from public disclosure under La. Rev. Stat. § 44:3A(3) and Mr. Arnold timely responded to Petitioner's request under La. Rev. Stat. § 44:32(D).**

Even if this Honorable Court is inclined not to agree that the Petitioner has no cause of action to bring forth the instant suit, she still cannot prevail because Mr. Arnold timely responded to her public records request and the requested documents are statutorily exempt from public disclosure.

Louisiana Public Records Law states in part under La. Rev. Stat. § 44: 32D that

If a record is requested and the custodian raises a question regarding whether or not the requested record is a public record, the custodian must within three (3) days, exclusive of Saturdays, Sundays, and legal public holidays, of receipt of the request, notify in writing the person making the request of the custodian's determination and reasons therefor. The written notification shall contain a reference to the basis under the law that the custodian has determined exempts the record, or any part of the record, from inspection, copying, or reproduction.<sup>5</sup>

Again, Mr. Arnold timely responded to the Petitioner's request within the time delays statutorily set.<sup>6</sup> Mr. Arnold also responded in writing as required by law.<sup>7</sup> Therefore, Mr. Arnold cannot be found to be in violation of La. Rev. Stat. § 44: 32D.

Next, La. Rev. Stat. § 44:3A(3) states in part that:

A. Nothing in this Chapter shall be construed to require disclosures of records, or the information contained therein, held by the offices of the attorney general, district attorneys, sheriffs, police departments, Department of Public Safety and Corrections, marshals, investigators, public health investigators, correctional agencies, communications districts, intelligence agencies, Council on Peace Officer Standards and Training, Louisiana Commission on Law Enforcement and Administration of Criminal Justice, or publicly owned water districts of the state, which records are:

...  
(3) Records containing security procedures, investigative training information or aids, investigative techniques, investigative technical equipment or instructions on the use thereof, criminal intelligence information pertaining to terrorist-related activity, or threat or vulnerability assessments collected or obtained in the prevention of terrorist-related activity, including but not limited to physical

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<sup>5</sup> La. Rev. Stat. § 44:32D.

<sup>6</sup> Id.

<sup>7</sup> See Exhibit 1-Copy of Mr. Arnold's response to Petitioner's public records request.

security information, proprietary information, operational plans, and the analysis of such information, or internal security information;

La. Rev. Stat. § 44:3A(3); and

Nothing in this Chapter shall be construed to require disclosure of records containing security procedures, criminal intelligence information pertaining to terrorist-related activity, or threat or vulnerability assessments created, collected, or obtained in the prevention of terrorist-related activity, including but not limited to physical security information, proprietary information, operational plans, and the analysis of such information, or internal security information.

In the instant case, the City Attorney's Office on behalf of Mr. Arnold promptly and timely responded to the Petitioner's public records request for any maps showing the location of crime cameras located in the City of New Orleans. The Petitioner's request regarding the location of the City's crime cameras was denied due to the fact that the requested records are concerning investigative technical equipment and/or physical security information created in the prevention of terrorist-related activity. While the Petitioner may not agree with the exemption invoked by the City that does not mean that Mr. Arnold can be compelled to turn over records that the Department of HSEP has deemed to be exempt and not "public" records under the law. Based on the plain language of the aforementioned statute, the records requested by the Petitioner are exempt from disclosure under Louisiana Public Records Law.<sup>8</sup>

A map of the City's crime camera locations is tantamount to critical infrastructure. Analogously, the Critical Infrastructures Protection Act of 2001 is a statute that was enacted to protect physical and information infrastructures. Under that law, the term "critical infrastructure" means "systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters."<sup>9</sup> The same holds true for the locations of the City's crime cameras. The Department of HSEP has determined that the disclosure of this information to the public could have serious impacts on the City's security.

Revealing the locations or a map of crime cameras as requested would also hinder the NOPD's ability to perform physical surveillance on locations around the City of New Orleans.

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<sup>8</sup> Ms. Bixby's petition relies upon third party hearsay for its reasoning as to why the requested records should be disclosed.

<sup>9</sup> 42 U.S.C. § 5195c(e).

Additionally, the disclosure of these locations could shift crime displacement and threaten the public safety of the citizens of New Orleans. Studies have shown that City cameras also aid in the prevention of terrorist related activity. More specifically:

Locations that present homeland security risks are also important to consider when developing a city's camera placement strategy. Cameras have been installed in and around likely targets for terrorism, such as... notable landmarks or monuments, which can aid law enforcement in identifying suspicious behavior. The potential utility of cameras for this purpose has led many metropolitan areas to include cameras in their terrorism preparedness strategies.<sup>10</sup>

**III. Attorney's Fees, Costs, and Civil Penalties should not be awarded because Mr. Arnold did not act in an arbitrary, capricious or unreasonable manner.**

La. Rev. Stat. § 44:35 provides that a party may collect attorney's fees, costs, and damages if they are denied the right to inspect and/or copy public records. However, in order to establish that the requesting party is entitled to attorney's fees, costs, and damages, the party must prove that the custodian of records acted in an arbitrary, capricious or unreasonable manner by his/her denial of the Public Records Request.<sup>11</sup> Mr. Arnold did not act in an arbitrary, capricious or unreasonable manner. In fact, Mr. Arnold acted in good faith when he timely responded to the Petitioner's Public Records Request on August 14, 2018, in writing citing the appropriate exemptions.

While the Petitioner may not be satisfied with the Mr. Arnold's response to her request, it does not show that he did not acted arbitrarily, capricious, or in an unreasonable manner. As such, the Petitioner is not entitled to attorney's fees, costs, or damages because she was not arbitrarily denied the right to access the public records requested.

In sum, the Petitioner cannot overcome the basic fact that Mr. Arnold fulfilled his duty as the custodian of records by timely responding to the Petitioner's request in writing with the appropriate exemptions as afforded by the law.

**CONCLUSION**

For all of the reasons set forth in detail above, Petitioner's requests for mandamus and/or injunctive relief, attorney's fees, costs and civil penalties should be dismissed.

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<sup>10</sup> <https://www.urban.org/sites/default/files/publication/27551/412402-Using-Public-Surveillance-Systems-for-Crime-Control-and-Prevention-A-Practical-Guide-for-Law-Enforcement-and-Their-Municipal-Partners.PDF>; pg. 33.

<sup>11</sup> *Ott v. Clarkson*, 2003-1287 (La.App. 4 Cir. 12/10/03), 863 So. 2d 663.

Respectfully submitted,



**JEZREEL C. JOSEPH, LSB# 35410**

ASSISTANT CITY ATTORNEY

**ISAKA WILLIAMS, LSB#29704**

ASSISTANT CITY ATTORNEY

**CORWIN ST. RAYMOND, LSB# 31330**

DEPUTY CITY ATTORNEY

**CHURITA H. HANSELL, LSB# 25694**

CHIEF DEPUTY CITY ATTORNEY

**DONESIA D. TURNER, LSB# 23338**

SR. CHIEF DEPUTY CITY ATTORNEY

**SUNNI J. LEBEOUF, LSB# 28633**

CITY ATTORNEY

1300 Perdido Street

City Hall - Room 5E03

New Orleans, Louisiana 70112

Telephone (504) 658-9800

Facsimile (504) 658-9868

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a copy of the above and foregoing pleadings have been forwarded to opposing counsel by depositing a copy of same in the U.S. Mail, postage prepaid, or by electronic mail, or by hand delivery on this 16<sup>th</sup> day of March, 2019.



**JEZREEL C. JOSEPH**



# City of New Orleans Public Record Requests

FILED

2019 MAR -6 PM 3:03

CIVIL  
DISTRICT COURT

Request #18-4534

CLOSED

As of March 6, 2019, 2:05pm  
Request Visibility: Published

## Details

I am requesting

- 1) any map or maps which the City maintains showing the location of all PUBLICLY VISIBLE (in other words, with red and blue lights and the NOPD logo) real time crime cameras, not including traffic/red light/school zone cameras, at the present date
- 2) any policies governing the keeping of records of locations of such cameras on past dates
- 3) records or policies regarding the number and type of staff employed at the Real Time Crime Center

*Received*

**August 9, 2018** via web

*Due*

**August 14, 2018**

*Departments*

Homeland Security & Emergency Preparedness

*Requester*

LAURA BIXBY







# City of New Orleans Public Record Requests

2601 TULANE AVE SUITE 700, NEW ORLEANS, LA 70119  
504-827-7051  
ORLEANS PUBLIC DEFENDERS

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## *Requester email status list*

External message added

- **Sent** August 14, 2018, 3:46pm
  - **Delivered** August 14, 2018, 3:47pm
  - **Opened** August 24, 2018, 10:17am
- 

## *Tags*

## Documents

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### *Public*

(none)

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### *Requester*

[Staff Directory.pdf](#)

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### *Staff Only*

[Staff Directory.pdf](#)

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## Staff

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### *Point of Contact*

[pr@nola.gov](mailto:pr@nola.gov)

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### *Support*



# City of New Orleans Public Record Requests

- [cmarnold@nola.gov](mailto:cmarnold@nola.gov)
- [dtshedd@nola.gov](mailto:dtshedd@nola.gov)
- [mantoine@nola.gov](mailto:mantoine@nola.gov)
- [mvcamp@nola.gov](mailto:mvcamp@nola.gov) *(deactivated)*
- [rbourgeois@nola.gov](mailto:rbourgeois@nola.gov)
- [rcmast@nola.gov](mailto:rcmast@nola.gov)
- [sagarrett@nola.gov](mailto:sagarrett@nola.gov)

## Tasks

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## Timeline

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<b>Request Published</b> August 14, 2018, 3:47pm by Admin Law	Public
<b>Request Visibility</b> Published (was All Staff) August 14, 2018, 3:47pm by Admin Law	Staff Only
<b>Request Closed</b>  Our office has closed this request. Please remit payment and/or schedule an appointment to review records.  Please be advised that records responsive to your request have been compiled and are available for your review, or you may purchase the records for the amount stated in the previous message our office just sent you.  <b>Please contact the City Attorney's Office Public Records Team at 504-658-9800 to schedule a day and time (Tuesdays - Thursdays) to obtain your records.</b>  Fees - We accept cash (please pay exact amount), check, or money order payable to	Public



# City of New Orleans Public Record Requests

Mail or pick-up - You may remit payment and retrieve the records directly from our receptionist. Or you may mail payment to our office; upon receipt of payment we will mail the records to the address you provide.

Please schedule a day and time with our office **prior** to picking up records to ensure that the records are with the receptionist. Or you may mail payment to our office; upon receipt of payment we will mail the records to the address you provide.

Mail to or pick-up from:

City Attorney's Office  
1300 Perdido St., Ste. 5E03  
New Orleans, LA 70112

August 14, 2018, 3:46pm by Admin Law

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## External Message

Requester + Staff

Ms. Bixby:

Records responsive to your first request regarding the location of the City's crime cameras are exempt from disclosure under the Public Records Law because they are records regarding investigative technical equipment and physical security information created in the prevention of terrorist-related activity. The Public Records Law provides, in pertinent part, as follows:

A. Nothing in this Chapter shall be construed to require disclosures of records, or the information contained therein, held by the offices of the attorney general, district attorneys, sheriffs, police departments, Department of Public Safety and Corrections, marshals, investigators, public health investigators, correctional agencies, communications districts, intelligence agencies, Council on Peace Officer Standards and Training, Louisiana Commission on Law Enforcement and Administration of Criminal Justice, or publicly owned water districts of the state, which records are:

...  
(3) Records containing security procedures, investigative training information or aids, investigative techniques, investigative technical equipment or instructions on the use thereof, criminal intelligence information pertaining to terrorist-related activity, or threat or vulnerability assessments collected or obtained in the prevention of terrorist-related activity, including but not limited to physical security information, proprietary information, operational plans, and the analysis of such information, or internal security information;

La. Rev. Stat. § 44:3A(3); and



## City of New Orleans Public Record Requests

containing security procedures, criminal intelligence information pertaining to terrorist-related activity, or threat or vulnerability assessments created, collected, or obtained in the prevention of terrorist-related activity, including but not limited to physical security information, proprietary information, operational plans, and the analysis of such information, or internal security information.

Id. § 44:3.1. Accordingly, the records responsive to your first request will not be made available for your review.

The Office of Homeland Security and Emergency Preparedness does not have records responsive to your second request regarding policies governing keeping records of locations of cameras.

Records responsive to your third request regarding number of employees at the Real Time Crime Center have been compiled and are available for your review, or you may purchase the records for \$0.50 (1 page @ \$0.50/page).

**To review or purchase your records in person, please contact the City Attorney's Office Public Records Team at 504-658-9800 to schedule a day and time Tuesday - Thursday.**

Fees - We accept cash (please pay exact amount), check, or money order payable to the *City of New Orleans*.

Mail or pick-up - You may remit payment and retrieve the records directly from our receptionist. Or you may mail payment to our office; upon receipt of payment we will mail the records to the address you provide.

Please schedule a day and time with our office **prior** to picking up records to ensure that the records are with the receptionist. Or you may mail payment to our office; upon receipt of payment we will mail the records to the address you provide.

Mail to or pick-up from:

City Attorney's Office  
1300 Perdido St., Ste. 5E03  
New Orleans, LA 70112

August 14, 2018, 3:46pm by Admin Law (Staff)

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**Internal Message**

Staff Only



# City of New Orleans Public Record Requests

records on the locations of such cameras. - Dan

August 14, 2018, 2:28pm by Daniel Shedd (Staff)

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## Internal Message

Staff Only

*Law staff:*

*#1. Record exempt.*

*#2. One page \$.50.*

August 14, 2018, 12:09pm by Sarah Garrett (Staff)

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## Support Staff Added

Staff Only

Daniel Shedd

August 14, 2018, 11:46am by Admin Law

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## Document(s) Added

Staff Only

Staff Directory.pdf

August 9, 2018, 3:36pm by Ross Bourgeois

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## Internal Message

Staff Only

1 & 2. Security Exemption

3. See attached employee roster with appropriate classification of each employee.

August 9, 2018, 3:30pm by Ross Bourgeois (Staff)

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## Internal Message

Staff Only

Ross Bourgeois will handle for NOHSEP/RTCC.

August 9, 2018, 3:02pm by Collin Arnold (Staff)

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## External Message

Requester + Staff

Thank you, our office has received your Public Records Law request. Your request has been forwarded to the City department or office which is the custodian of the records you requested. The custodian will determine whether responsive records exist, and if so, compile the records for your review.



# City of New Orleans Public Record Requests

be adjusted depending on the nature of your request.

Note also that records may be in active use at this time and therefore not available for immediate review. Additionally, in accordance with the Louisiana Public Records Law, the City of New Orleans strives to promptly release all records which contain only public information and are not otherwise exempt from the Public Records Law. The City must balance its commitment to open access with its legal obligation to review public records for such exceptions and exemptions prior to release.

As soon as the custodian notifies our office that the records have been compiled and are available for review, we will notify you to schedule a mutually agreeable time to review or purchase copies of the records. Thank you for your request, and we look forward to working with you to provide public records in a fair and efficient manner.

Thank you,

City Attorney's Office  
City of New Orleans

August 9, 2018, 2:53pm

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<b>Support Staff Added</b>	Staff Only
Anita Curran	
Sarah Garrett	
Ryan Mast	
Michael Antoine	
Max Camp	
Ross Bourgeois	
Collin Arnold	
August 9, 2018, 2:53pm (auto-assigned)	

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<b>Department Assignment</b>	Public
Homeland Security & Emergency Preparedness	
August 9, 2018, 2:53pm (auto-assigned)	

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<b>Request Visibility</b>	Staff Only
All Staff	
August 9, 2018, 2:53pm (auto-assigned)	

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<b>Request Opened</b>	Public
Request received via web	
August 9, 2018, 2:53pm by LAURA BIXBY	

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